
Health and Safety Executive**CD261 - Consultation on replacement of the Construction
(Design and Management) Regulations 2007****Reply Form****Completing this Questionnaire**

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes, or click on the square grey boxes to select an answer (e.g. 'Yes' or 'No').

Respondent's details:**Name:**

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Organisation:

Homes for Scotland

Fax:

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Size of organisation:

Choose one option:

Not applicable

1 to 9 employees

10 to 49 employees

50 to 249 employees

250 to 1000 employees

1000+ employees

Self-employed

#

Type of organisation:

Choose one option:

Academic

Charity

Consultancy

Industry

Local government

Member of the public

National government

Non-departmental public body

Non-governmental organisation

Pressure group

Trade association

Trade union

If you chose 'Other' please
specify:

Is your response being made in your capacity as:

Choose one option:

An employer	<input type="checkbox"/>	An employee	<input type="checkbox"/>
Health and safety professional	<input type="checkbox"/>	Self-employed	<input type="checkbox"/>
Trade union official	<input type="checkbox"/>	Training provider	<input type="checkbox"/>

Other – please specify:

The trade body for the home building industry in Scotland

If you are a dutyholder under CDM 2007 which role best describes you?

Choose one option:

Client	<input type="checkbox"/>	CDM co-ordinator	<input type="checkbox"/>
Designer	<input type="checkbox"/>	Principal contractor	<input type="checkbox"/>
Contractor (including sub-contractor)	<input type="checkbox"/>	Worker	<input type="checkbox"/>

Other – please specify:

Not Applicable

Confidentiality

Please indicate below if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made available to the public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)

Structural simplification

Please read in conjunction with paragraphs 33 to 35

Q1. This consultation document sets out a new approach to CDM. HSE believes that this approach will be more easily understood by small or medium-sized employers than the current one (set out in CDM 2007). Do you:

Agree	<input checked="" type="checkbox"/>
Disagree	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

Homes for Scotland is the representative body for the home building industry in Scotland, with a membership of some 200 companies together providing 95% of all new homes built for sale across the country as well as a significant proportion of affordable housing. We are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people want to live.

Homes for Scotland (HFS) makes policy submissions on national and local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from our members.

It is understood that our member feedback is likely to be included within a number of responses from the industry's health & safety community and as part of individual submissions. With that in mind, Homes for Scotland welcomes the opportunity to provide comments on the general impact of proposed changes to the CDM regulations.

HFS agree that the proposed approach will offer greater clarification in terms of specific technical requirements relating to health & safety on construction sites in light of both the structural simplification of the regulations and the planned specific guidance for home builders.

We support any effort being made to ensure regulations are accessible, understood and relevant across the industry, especially for SME builders who may not have the expertise or resource to study complex regulation documentation.

Q2. Please comment on any of the definitions in draft regulation 2 that you think are problematic.

None

Q3. The technical standards have remained effectively unchanged. These are contained in Part 4 of the proposed Regulations. Is this approach acceptable to you?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

No Comments

Q4. CDM 2014 continues to place general duties on designers. HSE has redrafted the duties to make them clearer. In your opinion, are the designer duties clearer?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

<p>HFS support the proposal that ‘Designers’ continue to be responsible for general duties, however as long as the proposed guidance reinforces good practice in the same vein as the ACoP.</p> <p>It is feared that complete removal of the ACoP could potentially lead to the over prescriptive application of the regulations, and noted that it is preferable that the ACoP is not removed entirely. It was suggested that the ACoP could be streamlined and focused within an abridged version or should be included within the associated guidance including a number of key items:</p> <p>ACoP 124 – Designers have to weigh many factors as they prepare their designs. Health and safety considerations have to be weighed alongside other considerations including cost, fitness for purpose, aesthetics, buildability, maintainability and environmental impact.</p> <p>ACoP 131 – Designers must provide information that other project members are likely to need to identify and manage the remaining risks. This should be project specific, and concentrate on significant risks which may not be obvious to those who use the design.</p> <p>ACoP 133 – Significant risks are not necessarily those that involve the greatest risk, but those, including health risks that are: a) not likely to be obvious to a competent contractor or other designers; b) unusual, or; c) likely to be difficult to manage effectively.</p>
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Q5. Do you think that these general duties on designers would be effective in considering relevant health and safety risks during subsequent construction work?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

As noted previously, HFS supports placing general duties on ‘designers’. We believe that this supports a holistic approach to H&S and the effective integration of consideration of health & safety risks throughout the lifecycle of a project.

However, our members feel that it is important that this continues in the same vein as within the ACoP, and should preferably be included within an abridged ACoP. Subsequent guidance should also avoid over prescription of this regulation.

Q6. Construction phase health and safety plans, proportionate to the risks involved, will be required for all projects. Currently, only projects lasting more than 30 days or 500 person-days need plans. Will there be any impact for projects that currently do not require a plan?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

What will these be?

A construction phase HSE Plan is no more than what is currently required under the Management of H&S regulation, therefore noted by members that this will not affect the industry.

Replacing the ACoP with targeted guidance
Please read in conjunction with paragraphs 36 to 39

Q7. HSE proposes to withdraw the CDM 2007 ACoP and replace it with a tailored suite of sector-specific guidance. Do you agree with this approach?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

As previously mentioned, HFS strongly disagrees with this approach. Our members obtain real value from the ACoP and would prefer that it remain within some form within the proposed associated guidance.

The ACoP has an invaluable status within the industry and it would be a loss if removed entirely.

Q8. Please comment on whether there is any additional guidance that would be helpful.

HFS believes that if the ACoP is removed, then an abridged version specific to the home building sector would provide a framework for additional, not replacement, industry sector guidance.

Replacing the CDM co-ordinator with the principal designer

Please read in conjunction with paragraphs 40 to 44

Q9. HSE believes that there is a need to bring the pre-construction co-ordination function into the project team that is in control of the pre-construction phase. This will be an effective way of achieving the aim of integrated risk management. Do you agree with this approach?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

HFS agree that the responsibility of the Principle Designer (PD) to co-ordinate the pre-construction information will improve the effectiveness of integrating consideration of H&S matters throughout the lifecycle of a project.

It is believed that a collaborative approach from design, production and commercial teams will improve the quality of provision of meaningful, realistic pre-construction information.

However HFS feels that the definition of ‘Principle Designer’ requires greater clarification especially in relation to whether or not this role can be undertaken by someone other than a traditional designer. It was noted that the title ‘Principle Designer’ could be confused by some clients with ‘Lead Designer’, who traditionally may not be the same person appointed to undertake the co-ordination role. HFS would recommend that this is clarified to avoid confusion.

Q10. CDM 2015 requires the appointment of a Principal Designer (PD) and Principal Contractor (PC) if a project involves more than one contractor. What would be the impacts for projects that do not currently require such appointments:

a) at the pre-construction phase? Please provide comments, including evidence where available, if you wish.

It was noted that this requirement implies that if there is only one contractor, even a large multi-trade contractor, there would be no need for pre-construction information. We believe this is a flawed assumption.

The development of pre-construction information is a discipline that encourages the team to look at the risks inherent in the design, etc. that needs to be considered. The loss of pre-construction information, even when only one contractor, could be particularly damaging to the drive to improve health & safety in the construction industry given the recent trends highlighted in CD261 paragraph 26:

“the balance of where serious and fatal injuries occur has shifted dramatically in the past 10-15 years. Two thirds or more of fatalities now occur on small sites – sites where fewer than 15 people work – which is the reverse of the historical picture.”

b) at the construction phase? Please provide comments, including evidence where available, if you wish.

Under CDM2007, other than considering the implications of any design changes, providing advice to the client and preparing a health & safety file, there is no role for a CDM Coordinator once the construction has started. We see no significant change here.

Replacing the explicit requirement for individual competence with new regulation 8 and removing CDM’s explicit requirement for corporate competence

Please read in conjunction with paragraphs 45 to 54

Q11. The draft Regulations do not explicitly require clients to check the competence of organisations, before they are appointed to carry out construction work. However, this

requirement is implicit in the duty in regulation 5 for clients to ensure adequate management arrangements. HSE believes that this will be clearer to those reading the Regulations.

Do you:

Agree	<input checked="" type="checkbox"/>
Disagree	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

HFS agree that this approach will be clearer to home builders reading the proposed regulations. We believe that the requirement to check competence of organisations is implied under the client duties under Reg 5. to ensure adequate management arrangements. It is felt that this subsequently ensures that operatives receive adequate and appropriate information, instruction, training and supervision under Reg 8.

Q12. What should be required of clients to ensure the competence of those they appoint and / or engage in addition to ensuring project management arrangements are adequate and effective?

HFS believes that it is the responsibility of the industry to ensure that people brought onto a project are adequately skilled and competent in the role they carry out.

Home builders, as the client in this case, will most likely have built up mature relationships with sub-contractors spanning a number of years, demonstrating confidence in the competence of those they appoint. It is understood that further checks, supervision and monitoring will be required when appointing a new-subcontractor. The home building industry is well placed in understanding what information is required to demonstrate competence, to which none of the pre-qualification schemes introduced under CDM 2007 add value to.

Q13. The draft Regulations replace the specific requirements for individual worker competence in CDM 2007 with a more general requirement. Under CDM 2014 those arranging for or instructing workers to carry out construction work should ensure they have received sufficient information, instruction and training and have adequate supervision. HSE believes that this will have no adverse effects on health and safety.

Do you:

Agree	<input checked="" type="checkbox"/>
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Disagree

Please provide comments, including evidence where available, if you wish.

HFS agree with this position and the move to incorporate an approach that adds value, not bureaucracy to individual worker competence. As implied under Reg 8. those arranging for persons to carry out construction work have a clear duty to ensure that the person has relevant and sufficient information, instruction, and training to carry out the job safely, and supported through adequate supervision.

It is felt that this approach will improve health & safety enabling those instructing and training workers to focus upon adding value to this process as opposed to completing 'competence' based paperwork as a means of meeting requirements of the documented pre-qualification schemes under CDM 2007.

Notification

Please read in conjunction with paragraph 62

Q14. CDM 2015 changes the notification threshold to cover projects lasting more than 30 working days and having more than 20 workers working simultaneously at any point in the projects; or exceeding 500-person days. This will reduce the number of projects that need to be notified, but will require notification of domestic clients' projects that exceed this threshold.

What do you think will be the impact of this?

This measure will not affect our members. However, it was noted that members had general concerns was with those raised under question 10a. relating to CD:261 paragraph 26:

“the balance of where serious and fatal injuries occur has shifted dramatically in the past 10-15 years. Two thirds or more of fatalities now occur on small sites – sites where fewer than 15 people work – which is the reverse of the historical picture.”

Under the proposed CDM regulations, it is understood that the same projects highlighted in the paragraph above would not be required to be notified to HSE. This could be particularly damaging to the drive to improve health & safety in the construction industry given the trends highlighted above.

Clients including domestic clients

Please read in conjunction with paragraphs 55 to 58

Q15. Clients' duties in proposed regulations 5, 7 and 8 maintain a strong focus on the way that construction work is carried out on their behalf. Do you think this is the best approach for commercial clients' projects?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

No Comment

Q16. HSE's preferred approach in relation to domestic clients' projects is set out in regulation 4. By default this deems that their duties will be fulfilled by the contractor (or principal contractor where there is more than one contractor). There is also the possibility that a domestic client can instead have a written agreement with a principal designer that the principal designer will fulfil those duties. HSE believes this would be a proportionate approach.

Do you agree with this approach for domestic clients' projects?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

This would have no impact upon the home building industry as home builders would not be classified as a 'domestic client'.
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Impact Assessment (Annex 2)

Q17. Do you agree with the analysis of the impacts (including costs and benefits) on commercial projects presented in the IA?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

If you have answered 'Yes', please provide comments if you wish.

No Comments

If you have answered 'No', what steps would you take to improve it? Please provide numerical data to aid appraisal if relevant.

No Comments

Q18. Do you agree with the analysis of the impacts (including costs and benefits) on domestic projects presented in the IA?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

If you have answered 'Yes', please provide comments if you wish.

No Comments

If you have answered 'No', what steps would you take to improve it? Please include numerical data to aid appraisal if relevant.

No Comments

Q19. Are there any costs or benefits (positive or negative) that we have missed that you believe should be taken into account?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

If you have answered 'Yes', please provide details. Including numerical data where possible

No Comments

If you have answered 'No', please provide comments if you wish.

No Comments

Other

Q20. Do you have any other comments on the proposals covered by this Consultative document? Please provide comments if you wish

HFS believe that the transitional arrangements for the implementation of CDM 2014 are unrealistic, and will create conflict for existing projects at the time of publication.

The introduction of transitional arrangements should allow existing projects to maintain the continuity of the established CDM team and structure to ensure that health and safety matters and input are well managed throughout the lifespan of a project.

The implications of adopting new regulations mid-project could result in confusion as to the roles and duties of organisations and individuals working on the project, increasing the health & safety risk for those working on the project. Where existing practices are working well on projects, consistency and continuity should remain a key priority throughout the transitional period.

We would also agree that transitional arrangement should allow clients (and other stakeholders) to review existing arrangements and standards, and give them the ability to implement CDM 2014 if necessary. We also agree that CDM 2015 should apply to all new projects following its publication.

Please send your response by 06 June 2014 to:

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Thank you for taking the time to complete this questionnaire